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Supreme Court
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No. 1052.

In the Supreme Court of the United States

October Term, A. D. 1946.

CHARLES FREEMAN ALEXANDER, *Petitioner and Appellant Below,*

vs.

MARJORIE LONGAN ALEXANDER, *Respondent and Appellee Below.*

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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STATEMENT OF THE CASE.

This is an action to enforce the provisions of a property settlement agreement. It was first tried in the United States District Court for the District of Kansas, and resulted in a judgment for respondent. On appeal to the United States Circuit Court of Appeals, Tenth Circuit, the judgment of the District Court was affirmed.

Petitioner in his statement of the case failed or neglected to show that the property settlement agreement was

made in Kansas City, Jackson County, Missouri (R. 7); that the opening paragraph of the contract recited that petitioner was "of Jackson County, Missouri" (R. 7); that it affected property located in Kansas City, Missouri; that every obligation of the contract was to be performed in Kansas City, Missouri, and every payment petitioner was required to make was to be made in Kansas City, Missouri, including the payments of twenty per cent (20%) of his gross income in excess of $7,500.00 in each calendar year (R. 7 to 14).

Petitioner's principal income came from the Kansas City Suburban Water Company, 4502 West 59th Street, Mission, Kansas, a suburb of Kansas City, Missouri, which paid him a salary of $7,375.00 in 1944, and the Texas Water Company, 112 Baurline Street, Fort Worth, Texas, which paid him a salary of $9,225.00 in 1944, as president of both of said companies; and his salary from these companies in other years in controversy was in substantially the same proportion (R. 97, 105).

ARGUMENT.

Point A.

Respondent denies that the question stated by petitioner is presented.

The decision of the United States Circuit Court of Appeals does not involve the decision of that court of "an important question of local law in a way probably in conflict with the applicable local decisions." The decision involved the interpretation of a property settlement agreement having no general public interest. The clause of that contract in controversy appears in the second paragraph of Subdivision 6 (R. 11), which requires petitioner, his estate or legal representatives, to pay to respondent in Kansas City, Missouri, for each calendar year, twenty per cent (20%) of his gross income in excess of $7,500.00 for that year.

Petitioner executed the property settlement agreement in Kansas City, Missouri, on the 7th day of March, 1939. Respondent obtained a divorce from petitioner on March 14, 1939, in Kansas City, Missouri. The divorce decree expressly approved and ratified the property settlement agreement. On the same day that the decree of divorce was granted, petitioner married Lou Carrol, and thereafter established a marital residence in Fort Worth, Texas.

The Circuit Court of Appeals stated that "the question posed, turns upon the interpretation of the phrase 'gross income' as the parties understood and used that term when they executed their contract," and held:

> "Admittedly, this is a Missouri contract. The parties lived in Missouri, the contract was executed in Missouri, and was to be performed there. It follows

that the contract is to be interpreted under the laws of Missouri.

There is no uncertainty or ambiguity in the subject matter or the result sought to be accomplished by the execution of the contract" (R. 127);

and under the Missouri law "gross income" includes gains from whatever source derived.

The opinion of the Circuit Court of Appeals, which affirmed the decision of the trial court, concluded:

> "Of course, he (Alexander) could go to Texas, but when he went he did not take the contract with him. It remained in Missouri, so to speak, a Missouri contract subject to Missouri law, and subject to interpretation under that law. His removal to Texas did not change a Missouri contract into a Texas contract. His obligation under the contract still depended upon the law of Missouri, the place where the contract was made. When he executed this contract in Missouri, he fixed his liability under the canopy of Missouri law, and he remains thereunder until the performance of the contract is completed" (R. 129).

Petitioner recited in the opening paragraph of the property settlement contract that he was "of Kansas City, Jackson County, Missouri" (R. 7), and he is estopped to deny that. As pointed out by Judge Broaddus in his concurring opinion:

> "The majority opinion states with clarity the holding of the court. I am in full accord with the court's conclusion that the parties intended the property settlement agreement to be construed and understood as a Missouri contract, and the parties did not intend to give extra-territorial effect to the community property laws of the State of Texas.
>
> It should be made clear, however, that at the time the agreement was executed, Alexander had been

> living in Texas for a period of over eighteen months. Notwithstanding that fact, the contract recited that Alexander was a resident of Jackson County, Missouri. That he could be living and working in one place while his legal residence was in another is academic. The legal residence of a person is a question of intent. It follows that when Alexander, by written contract, fixed his residence in Missouri, it was a binding declaration of the place of his residence, and a further indication that he intended his obligations under the property settlement agreement to be those of a resident of Missouri" (R. 135-6).

Judge Helvering of the United States District Court for the District of Kansas, who conducted the original trial of the case, held that:

> "The meaning of the term 'gross income' as used in the second paragraph of Subdivision 6 of the property settlement agreement is governed by the law of the state where the property settlement agreement was executed and where such agreement was to be performed and by the intent of the parties to said agreement.
>
> The application of the Texas community property law to gross income received in that state, and, particularly, as such application may affect the nature of gross income as shown on federal income tax returns by citizens and residents of that state, does not control the meaning of the term 'gross income' as used in the said property settlement agreement executed in Missouri between parties who were citizens and residents of Missouri at the time of the execution of such agreement and which agreement was to be performed in Missouri (R. 118, 119; 64 F. Supp. 123).

The opinion of the Circuit Court of Appeals affirmed the decision of the District Court, Circuit Judge Huxman writing the opinion of the court; Circuit Judge Phillips

dissenting; and District Judge Broaddus writing a concurring opinion (R. 125; 158 F. (2d) 429).

The decision turned on whether the property settlement agreement in controversy was a Missouri contract. If it was, then the term "gross income" was to be construed according to the laws of Missouri. The Circuit Court of Appeals held it was a Missouri contract; hence the community property law of Texas had no bearing on its interpretation.

> 41 C. J. S., Sec. 101: "Ordinarily the validity and interpretation and effect of a marriage settlement are governed by the law of the jurisdiction in which the contract of settlement was made, and are not affected by the subsequent removal of the parties to another state."
>
> Sec. 289—Restatement, Conflict of Laws: "At marriage the husband and wife respectively acquire such rights or other interests in movables then belonging to the other as are given by the laws of the domicile of the husband at the time of marriage.
>
> It is immaterial that the spouses intend after marriage to live in another place other than the domicile of the husband at the time of marriage."

The Circuit Court of Appeals in construing the property settlement agreement to be a Missouri contract, to be construed according to the laws of Missouri, did not decide an important question of local law in a way directly in conflict with the applicable local decisions and the decision of this Court.

Point B.

The meaning of the phrase "gross income" as used in the contract in question has no ambiguity, because it was to be construed under the laws of Missouri.

"Gross income," as interpreted in Missouri, includes gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce, or sales or dealings in property, whether real or personal, growing out of ownership or use of or interest in such property; also from interest, rents, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever.

By the terms of the property settlement agreement, capital gains, if any, are to be excluded, and therefore represents the only item of petitioner's income which could be excluded.

By holding that the contract was to be construed according to the laws of Missouri, the Circuit Court of Appeals did not make a decision as to the meaning of "gross income" which was in conflict with the applicable local decisions and the decisions of this Court.

Point C.

The Circuit Court of Appeals did not decide the case upon hypothetical facts, but upon the actual facts as shown by the record.

Petitioner misconstrued the decision of the Circuit Court of Appeals. There was no attempt to speculate upon what petitioner's income might have been if he had remained a

resident of Missouri, or remained single, as the petitioner contends the court did. In finding that the property settlement agreement was a Missouri contract, to be construed according to the laws of Missouri, the court said, in effect, that petitioner's residence and marital status were not to be considered in computing his "gross income," which was to be interpreted according to the Missouri law.

> "His (petitioner's) removal to Texas did not change a Missouri contract into a Texas contract. His obligations under the contract still depended upon the law of Missouri, the place where the contract was made; and when he executed this contract in Missouri he fixed his liability under the canopy of Missouri law and he remains thereunder until the performance of the contract is completed" (R. 129).

Conclusion.

Petitioner has misconstrued the decision of the Circuit Court of Appeals. It did not undertake to interpret the community property law of Texas; it simply held that the property settlement contract was a Missouri agreement made in Missouri, affecting property located in Missouri, by parties resident in Missouri, and by its clear intent to be construed according to the Missouri law. The principles back of that finding are established principles of general law, are academic, and are not in conflict with applicable local decisions and the decisions of this Court; and under Rule 35 do not afford a basis for granting a writ of certiorari.

This case involved particular facts, not likely to recur; it has no general public interest; a further decision by this Court would not tend to advance the public interest.

Wherefore, it is respectfully submitted that petitioner's application for a writ of certiorari should be denied.

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